

**DUSSAUD**  
**Serial No. 10/579,052**  
September 19, 2008

**AMENDMENT TO THE DRAWINGS**

Please add the attached new drawing sheet comprising FIG. 1.

Attachment: New Drawing Sheet – Fig. 1

## **REMARKS**

Favorable reconsideration and allowance of this application are requested.

### **1. Discussion of Amendments**

By way of the amendment instructions above, a new drawing sheet labeled "FIG. 1" has been submitted as required by the Examiner. No question of "new matter" has been presented by the submission of FIG. 1 since it merely represents pictorially information already disclosed by prose in the originally filed specification, such as, for example, the description appearing on page 3, lines 25 et. seq. and page 4, lines 23 et. seq.

The specification has been amended so as to insert a brief description of the new drawing FIG. 1 and to include reference numerals therein for the purpose of correspondence. In addition, the specification has been amended so as to include appropriate application headers as required by the Examiner.

All claims have been amended in an effort to clarify the same and to address the Examiner's rejections under 35 USC §112. For example, phraseology more consistent with US practices has been adopted (e.g., by replacement of the transitional phrase "characterized in that" to "wherein").

In addition, pending claim 1 has been clarified to emphasize that the plant protection device of the invention comprises a biodegradable tubular member adapted to surround a plant to be protected, wherein the tubular member is formed of at least one tubular fibrous support sheet which is comprised of annual fibres, the support sheet being parchmented or vulcanized to impart water resistance and transparency thereto sufficient to allow for photosynthesis of the protected plant within the tubular member. Support for the amendments to claim 1 can be found, e.g., at page 3, lines 25-28 and page 4, lines 23-29.

Claims 20-24 are new and include preferred ranges and limitations that were embedded in, but now removed from, prior dependent claims.

Accordingly, upon entry of this amendment, claims 1-24 will remain pending herein for which favorable action on the merits is solicited.

## **2. Response to 35 USC §112 Issues**

The amendments to the claims presented above are believed to render moot all issues raised under 35 USC §112, second paragraph. Withdrawal of such rejection is therefore in order.

## **3. Response to Art-Based Issues**

### **A. Rejection of claims 1-2, 6, 10 and 19 based on Davis**

Claims 1-2, 6, 10 and 19 attracted a rejection under 35 USC §102(b) as allegedly anticipated by Davis (GB 2290691A). Applicants respectfully disagree.

True, Davis does disclose a tree and shrub protector which is in the form of a spirally wound core. However, it is really at this juncture that any perceived similarities between the present invention and Davis cease. Specifically, contrary to the Examiner's assertion, Davis does not disclose at all that the core may be formed of ***parchmentised or vulcanized*** sheets formed of annual fibers. As such, Davis does not disclose or suggest that such parchmetized or vulcanized sheets are water-resistant and sufficiently ***transparent*** so as to allow for photosynthesis of the protected plant therewithin.

As such, vulcanizing or parchmetizing sheets of annual fibers so as to achieve transparency to allow photosynthesis through a tubular member surrounding a growing plant as defined by the applicants' claims is both novel and unobvious. Hence,

withdrawal of the rejection advanced under 35 USC §102(b) based on Davis alone is in order.

**B. Rejection of claims 1, 16 and 17 based on Achim**

Claims 1, 16 and 17 attracted a rejection under 35 USC §102(b) as allegedly anticipated by Achim (GB 2104366A).<sup>1</sup> Applicants respectfully disagree.

In this regard, Achim discloses a wind protection tube. Other than its tubular form, Achim does not bring anything new into the current discussion. Specifically, Achim does not disclose or suggest at all a tubular member formed of parchmetized or vulcanized sheets that are water-resistant and sufficiently transparent so as to allow for photosynthesis of the protected plant therewithin. Indeed, the graphical depiction of Achim's Fig. 3 shows the plant in dotted line which connotes that the tubular wall structure is opaque.

Again, as evidenced by Achim, vulcanizing or parchmetizing sheets of annual fibers so as to achieve transparency to allow photosynthesis through a tubular member surrounding a growing plant as defined by the applicants' claims is both novel and unobvious. Hence, withdrawal of the rejection advanced under 35 USC §102(b) based on Achim alone is in order.

**C. Rejection of claims 1 and 18 based on Proctor**

Claims 1 and 18 attracted a rejection under 35 USC §102(b) as allegedly anticipated by Proctor (USP 3,958,365). Applicants respectfully disagree.

Proctor discloses a horticultural aid, a purpose of which is to conserve soil moisture for the growing plant – i.e., a ground cover mat. The horticultural aid of

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<sup>1</sup> In fact, the surname of the applicant for GB 2104366A is "Lorenz" but applicants will refer to this reference by the applicant's given name "Achim" so as to be consistent with the Examiner's terminology and avoid confusion in the record.

Proctor also serves to “prevent weed growth” (col. 2, line 52). Self-evidently therefore the horticultural aid of Proctor could not be sufficiently transparent to allow for photosynthesis as this would actually promote – not prevent – weed growth.

As evidenced by Proctor, vulcanizing or parchmetizing sheets of annual fibers so as to achieve transparency to allow photosynthesis through a tubular member surrounding a growing plant as defined by the applicants’ claims is both novel and unobvious. Hence, withdrawal of the rejection advanced under 35 USC §102(b) based on Proctor alone is in order.

**D. Rejection of claims 3 and 4 based on Davis and Bugler et al**

Claims 3 and 4 attracted a rejection under 35 USC §103(a) as allegedly being “obvious” over Davis in view of Bugler et al (USP 6,481,155). Applicants respectfully disagree.

The deficiencies of Davis has already been discussed previously in Section 3.A above and thus do not need to be restated here. Bugler et al does not cure such deficiencies. In fact, Bugler et al has very little, if any, relationship to the herein claimed subject matter. While it is true that the tubular article of Bugler et al has a slot defined therein, it is equally true that no disclosure of transparency of such tubular article exists therein. Indeed, the graphical representations of dotted lines in Bugler et al’s figures denotes an opacity to the tubular member.

Thus, even if Bugler et al was combined with Davis, the present invention as defined by applicants’ claims 3 and 4 would not result. Withdrawal of the rejection advanced thereagainst under 35 USC §103(a) is therefore in order.

**E. Rejection of claims 5, 7 and 11-15 based on Davis**

Claims 5, 7 and 11-15 attracted a rejection under 35 USC §103(a) as allegedly being “obvious” over Davis alone. Applicants note in this regard that Davis cannot

render obvious the present invention since, as noted previously in Section 3.A above, Davis does not disclose or suggest that the core may be formed of sheets formed of annual fibers which are **parchmentized or vulcanized** to be water-resistant and sufficiently **transparent** so as to allow for photosynthesis of the protected plant therewithin.

As such, Davis cannot render “obvious” the invention defined by claims 5, 7 and 11-15 under 35 USC §103(a). Withdrawal of such rejection is therefore in order.

**F. Rejection of claim 14 based on Davis and Koffler et al**

Claim 14 attracted a rejection under 35 USC §103(a) as allegedly being “obvious” over Davis in view of Koffler et al (USP 4,829,707). Applicants respectfully disagree.

The deficiencies of Davis has already been discussed previously in Section 3.A above and thus do not need to be restated here. Koffler et al does not cure such deficiencies.

In this regard, Koffler et al discloses on the one hand a plastic opaque plant protector, and on the other hand an insulative member made of corrugated cardboard. Koffler et al is therefore unconcerned with biodegradability as his main product is made of a plastics material. Perhaps more importantly, Koffler et al does not disclose or suggest a plant protection device having sheets formed of annual fibers which are parchmentized or vulcanized to be water-resistant and sufficiently transparent so as to allow for photosynthesis of the protected plant therewithin.

Thus, even if Koffler et al was combined with Davis, the present invention as defined by applicants’ claim 14 would not result. Withdrawal of the rejection advanced thereagainst under 35 USC §103(a) is therefore in order.

**G. Rejection of claim 9 based on Davis and Reese**

Claim 9 attracted a rejection under 35 USC §103(a) as allegedly being “obvious” over Davis in view of Reese (USP 4,829,707). Applicants respectfully disagree.

The deficiencies of Davis has already been discussed previously in Section 3.A above and thus do not need to be restated here. Reese does not cure such deficiencies.

Specifically, Reese discloses a plant insulator which only shares with the present invention the fact that it surrounds a growing plant. There is no disclosure or suggestion in Reese of biodegradability, annual fibers, vulcanization, parchmentation and/or transparency. As such, withdrawal of the rejection advanced against claim 9 under 35 USC §103(a) based on the combination of Davis and Reese is in order.

**4. Conclusion**

Every effort has been made to advance prosecution of this application to allowance. Therefore, in view of the amendments and remarks above, applicant suggests that all claims are in condition for allowance and Official Notice of the same is solicited.

Should any small matters remain outstanding, the Examiner is encouraged to telephone the Applicants' undersigned attorney so that the same may be resolved without the need for an additional written action and reply.

An early and favorable reply on the merits is awaited.

**5. Fee Authorization**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed

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herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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